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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,178	10/23/2003	Thomas Christian Lines	14682-005001	8351

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EXAMINER	
PRATT, HELEN F	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/692,178	LINES ET AL.	
	Examiner	Art Unit	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 July 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-37* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-37* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

8-21-06

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1 and 2 contain the phrase "wherein the caffeine is added in pure form". No basis is seen for this limitation.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 2 are indefinite in the use of the phrase "caffeine is added in pure form". It is not known what is meant by this phrase or what degree of purity is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-6, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. '569.

Anderson et al. disclose a composition containing quercetin and Vitamin B3 as in claims 1, 2, 3, and the vitamins of claim 4 and Coenzyme Q10 of claim 16 (col. 5, lines 40-65. The reference also discloses the use of green tea which is seen to contain caffeine, as in claims 5 and 6 and the other ingredients since it is a green tea, and nothing is seen to have been removed from the green tea. Claim 1 further requires particular ratios of quercetin and caffeine. However, nothing has been shown that the reference does not contain the claimed ratio. The Patent Office is not in the position to perform food analysis. Also, nothing is seen in the specification as to any nexus between quercetin and caffeine nor any unexpected results using the claimed ingredients in a particular ratio. Caffeine is known to be a stimulant and would therefore enhance performance. Therefore, it would have been obvious to use a green tea because it contains the claimed ingredients and the other claimed ingredients as

shown by Anderson, and to use the claimed ratios absent any new or unobvious results.

Claims 1-15, 16-25, 28, 30-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gorsek, '195 in view of Gorsek '629 and further in view of Rosenberg et al. (6,579,544) and Husz (6,277,427), and Pearson (6,261,589) and Xiong et al. (6,299,925).

Gorsek '195 discloses a composition containing quercetin and Vitamin B3 as in claims 1, 2, 3, and the vitamins of claim 4 (col. 3, lines 10-60 and col. 5, lines 30-35).

The composition can be in dry form as in a tablet as in claims 7-9.

Taurine is disclosed as in claims 16-21.

Since the composition is to enhance eyesight, the composition is administered as in claims 22 , 23, 24, 25 and 28 as in claims 1-4 above (col. 4, lines 26-30). Claims 1-4, 7-9, 16-21 differ from the reference in the use of caffeine. However Gorsek '629 discloses that it is known to use green tea extract which is known to contain caffeine (col. 1, lines 59-70). Therefore, it would have been obvious to use caffeine in the composition of Gorsek '195 for its known function as a stimulant.

Claim 1 further requires a particular ratio of quercetin to caffeine. However, nothing has been shown that there is any nexus between quercetin and caffeine or any unexpected results using a particular ratio of the two. Therefore, it would have been obvious to use quercetin and caffeine for their known functions in the claimed composition.

The above claims and claim 2 differ from the reference in the use of caffeine added in pure form. However, no patentable distinction is seen in adding caffeine in pure form absent a showing of unexpected results. Therefore, it would have been obvious to use caffeine to the composition of the combined references for its known functions.

Some other ingredients found in the claims are found in these additional references. Rosenberg et al. further disclose that the use of quercetin is known in dietary supplements, as in claim 1, vitamin E, soy isoflavones, and ginko as in claims 16-21 (col. 19, lines 1-35). Husz discloses a composition containing caffeine, vitamin C, iron, vitamins in beverages, ginko extract as in claims 16-21 in a beverage (abstract). Pearson et al. disclose a composition containing B vitamins, caffeine and green tea in a carbonated mixture (abstract). The reference to Pearson et al. also disclose that taurine as in claims 16-21 and B vitamins along with caffeine is beneficial (col. 6, lines 10-50). Xiong et al. disclose green tea plant extract which is caffeinated with ginko biloba and B vitamins, and vitamin C. (col. 9, lines 30-65, col. 10, line 30). Therefore, it would have been obvious to use various known ingredients as disclosed above for their known function in beverages and supplements meant to improve health.

Nothing new is seen in supplementing various food compositions with vitamins as in claims 1-5 and with a green tea extract as in claim 6 as foods are routinely supplemented with vitamins. It would have been obvious to supplement beverages with green tea extract since the extract is from tea, and teas are generally made from

extracts as in extracting tea from tea leaves as in claims 7-15. Therefore, it would have been obvious to supplement foods with vitamins and quercetin.

The composition can be in dry form as in a tablet as in claims 7-9.

Claims 30-37 further require particular ratios of quercetin and caffeine. However, nothing has been shown that the reference does not contain the claimed ratio. The Patent Office is not in the position to perform food analysis. Also, nothing is seen in the specification as to any nexus between quercetin and caffeine nor any unexpected results using the claimed ingredients in a particular ratio. Caffeine is known to be a stimulant and would therefore enhance performance. Therefore, it would have been obvious to use a green tea because it contains the claimed ingredients and the other claimed ingredients as shown by Grosek '629, and to use the claimed ratios absent any new or unobvious results.

Claims 26, 27, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to the above claims, and further in view of Anderson et al. '569.

Claims 26, 27, and 29 further require a particular ingredients found in green tea extract. Anderson et al. disclose the use of Green Tea. Nothing is seen that it is not an extract, as teas are generally made from extracted material. Therefore, it would have been obvious to make a composition containing the ingredients of claims 26, 27 and 29

since they are found in green tea, and it would have been obvious to combine it with the above references for the known functions of the ingredients.

Information disclosure statement

Only the references initialed have been received.

ARGUMENTS

Applicant's arguments filed 7-17-06 have been fully considered but they are not persuasive.

Applicants argue that the reference to '629 is silent as to the ratio between quercetin and green tea extract. However, as above no unobvious results have been shown in using these ingredients in a particular ratio. As to the reference to Anderson et al. '569, applicants argue that it shows a ratio of 5:1 and applicants' claims are from 1:75 to 3:1. However a ratio of 5:10 as shown by Anderson is not seen to have been patently distinct from a ratio of 3:1 absent anything new or unobvious.

Applicants argue further that claims 26, 27 and 29 are to enhancing physical performance. However, nothing has been shown that administering the composition of the combined references would not have enhanced physical performance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 8-9-06

H. Pratt
HELEN PRATT
PRIMARY EXAMINER